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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,971	05/15/2001	Takao Omachi	NEC N01268	1601
27667 7590 04/03/2007 HAYES, SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718			EXAMINER SHELEHEDA, JAMES R	
			ART UNIT	PAPER NUMBER
			2623	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/03/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

09/855,971

**Applicant(s)**

OMACHI, TAKAO

**Examiner**

James Sheleheda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-8,13-15 and 19-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-8,13-15 and 19-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-4, 6-8, 13-15 and 19-30, have been considered but are moot in view of the new ground(s) of rejection as indicated in the interview conducted 03/30/07. The finality of the previous action is withdrawn.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4, 6-8, 13-15 and 19-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Hendricks et al. (Hendricks) (6,738,978 B1).

As to claims 1, 13, 20 and 27, Hendricks discloses a commercial message transmitting and receiving system (Fig. 1), and corresponding method, for transmitting and receiving commercial message materials (column 17, lines 4-19) comprising:

an advertiser terminal (within operations center, 208) to distribute a plurality of said commercial message materials and a plurality of pieces of commercial message/identification information (transmission of advertisements and ad targeting

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information; Fig. 17; column 35, line 65-column 37, line 48) each corresponding to each of said plurality of said commercial message materials, in a one-to-one relationship (wherein each ad has a corresponding targeted group information; column 35, line 65-column 37, line 48) over a same channel frequency and during a same time period (split screen simultaneous transmission of multiple ads over the same channel; column 40, lines 13-34);

a broadcast station terminal to create and output a scaled-down and synthesized images obtained by scaling down and synthesizing each of images of said plurality of said commercial message materials (commercial scaling and compression for the split screen transmission; column 40, lines 13-34) and multi-channeled voices obtained by assigning each of voices of said plurality of said commercial message materials to one single voice channel frequency being different from each other (audio switching to the frequency of the required commercial's audio; column 40, lines 13-34) and, at a same time, to synthesize and output said plurality of pieces of said commercial message/identification information (column 40, lines 13-34);

a transmitting device to modulate said scaled-down and synthesized images and said multi-channeled voices fed from said broadcast station terminal and to transmit them as program data and, at a same time, to modulate and transmit said plurality of pieces of said commercial message/identification information fed from said broadcast station terminal (wherein all of the data output to the subscribers is modulated for transmission; Fig. 6a, column 23, lines 21-35);

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a receiving terminal (user set top terminal; 220) to automatically select, based on said plurality of pieces of said commercial message/identification information transmitted from said transmitting device and viewer set in advance, the one commercial message material out of said plurality of said commercial message material (selecting one particular ad based upon the terminal's received ad information; column 38, lines 15-55 and column 40, lines 13-34) fed as said scaled-down and synthesized images and said multi-channelled voices from said transmitting device (column 40, lines 13-34) and to expand and display images of the one commercial message materials automatically selected out of said plurality of said commercial message materials contained in said scaled-down and synthesized images and, at a same time, to output voices of said voice channels of the one commercial message material automatically selected out of said plurality of said voice channels contained in said multi-channelled voices (column 40, lines 13-34);

wherein said receiving terminal is provided with a view attribute setting section which the viewer uses to set and store the attribute information of the viewer in advance (column 37, line 63-column 38, line 36); and

wherein the attribute information includes at least information about an age, a sex and a preference of the viewer (column 31, lines 31-54 and column 33, lines 51-58), and is read from said viewer attribute setting section, to automatically select the one commercial message material out of said plurality of said commercial message materials (column 31, lines 31-54 and column 33, lines 51-58 and column 37, line 63-column 38, line 36).

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As to claims 2, 14, 21 and 28, Hendricks discloses wherein said receiving terminal transmits the commercial message/identification information of the one commercial message material and said attribute information of the viewer automatically selected to said advertiser terminal through a network and wherein said advertiser terminal performs statistical processing of said commercial message/identification information transmitted from said transmitting device and said attribute information of the viewer (column 35, lines 50-64, column 36, lines 29-67).

As to claims 3, 15, 22 and 29, Hendricks discloses wherein said transmitting device, when said scaled-down and synthesized images and said multi-channelled voices are transmitted by digital broadcasting, transmits said commercial message/identification information as section information or packetized elementary stream information (wherein all of the data is transmitted by the headend as packetized MPEG data; column 9, lines 28-42 and column 11, lines 22-45).

As to claims 4 and 23, Hendricks discloses wherein said receiving terminal comprises:

- a viewer attribute setting section to store said attribute information of the viewer set in advance (column 37, line 63-column 38, line 36);

- a viewer attribute processing section to select one commercial message material based on said viewer's selection out of said plurality of said commercial message

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materials transmitted as said scaled-down and synthesized images and said multi-channelled voices from said transmitting device (column 38, lines 15-55 and column 40, lines 13-34);

an image cutting/expanding section to cut and expand images of the one commercial message materials selected by said viewer attribute processing section out of images of said plurality of said commercial message materials contained in said scaled-down and synthesized images transmitted from said transmitting device (set top scaling and repositioning the selected ad; column 40, lines 13-34);

a voice channel selecting section to select a single voice channel frequency of the one commercial message material selected by said viewer attribute processing section out of said plurality of said voice channels contained in said multi-channelled voices transmitted from said transmitting device (set top switching to the correct audio for the selected ad; column 40, lines 13-34);

a switching section to select either of said scaled-down synthesized images transmitted from said transmitting device or said images out of images output from said image cutting/expanding section (column 40, lines 13-34);

a display to display images output from said switching section (column 13, lines 1-7);

a speaker to output voices of said voice channels selected by said voice channel selecting section (to allow output of the selected audio; column 13, lines 1-7 and column 40, lines 13-34);

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a selected commercial message database to store the commercial message/identification information of the one commercial message material and said attribute information of said viewers selected by the viewer attribute processing section (column 37, line 63-column 38, line 36); and

a communication section to transmit the commercial message/identification information and said attribute information of the viewers stored in said selected commercial message database to said advertiser terminal through said network (column 35, lines 50-64, column 36, lines 29-67).

As to claims 6 and 24, Hendricks discloses wherein said advertiser terminal has a statistical processing section of performing statistical processing of said commercial message/identification information and said attribute information of the viewers transmitted from said communication section through said network (column 35, lines 50-64, column 36, lines 29-67).

As to claims 7 and 25, Hendricks discloses wherein said receiving terminal displays said scaled-down and synthesized images transmitted from said transmitting device and expands and displays (set top scaling and repositioning the selected ad; column 40, lines 13-34), when the viewer manually selects one commercial message material out of said plurality of said commercial message materials images of the one commercial message material manually selected (menu to allow user selection of a particular ad; column 17, lines 17-19) and, at a same time, outputs voices of said voice

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channels of the one commercial message material manually selected out of said plurality of voice channels contained in said multi-channeled voices (to allow output of the selected audio; column 13, lines 1-7 and column 40, lines 13-34).

As to claims 8 and 26, Hendricks discloses wherein said receiving terminal transmits the commercial message/identification information of the one commercial message material and said attribute information of the viewer manually selected to said advertiser terminal through a network and wherein said advertiser terminal performs statistical processing of said commercial message/identification information transmitted from said transmitting device and said attribute information of the viewer (column 35, lines 50-64, column 36, lines 29-67).

As to claims 19 and 30, Hendricks discloses wherein said viewer attribute processing section is able to automatically (column 31, lines 31-54 and column 33, lines 51-58 and column 37, line 63-column 38, line 36) and manually (column 17, lines 17-19) select one commercial message material out of said plurality of said commercial message materials transmitted as said scaled-down and synthesized image and said multi-channeled voices from said transmitting device (column 40, lines 13-36), based on said plurality of pieces of said commercial message/identification information transmitted from said transmitting device and said attribute information of the viewer stored in said viewer attribute setting section (column 31, lines 31-54 and column 33, lines 51-58 and column 37, line 63-column 38, line 36).

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### **Conclusion**

4. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

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Signature: \_\_\_\_\_

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Registration Number: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda  
Patent Examiner  
Art Unit 2623

JS



SCOTT E. BELIVEAU  
PRIMARY PATENT EXAMINER